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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/875,993	06/08/2001	Isabelle Afriat	208593US0	8352

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EXAMINER

NGUYEN, HELEN

ART UNIT PAPER NUMBER

1617

DATE MAILED: 05/17/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/875,993

Applicant(s)

AFRIAT ET AL.

Examiner

Helen Nguyen

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 April 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) 25 and 27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 12-17, 19-24 and 26 is/are rejected.
- 7) ☒ Claim(s) 4-11 and 18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All   b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

Applicants' election with traverse of species election, drawn to a method for improving keratin (species A), a gel particle (species C), water-insoluble N-aryl derivatives of glutamic acid and salts thereof (claim 21 (iii), and butylmethoxydibenzoylmethane, in Paper No. 6 is acknowledged. The traversal is on the ground(s) that the Office has failed to provide adequate reasons and/or examples to support this restriction and burden. However, there is no requirement to provide either for an election of species. In addition, this application contains claims directed to the patentably distinct species of the claimed invention as set forth in the previous restriction requirement. The search of these species claims would place an additional burden on the examiner. Applicants can overcome the election of species requirement by stating on the record that the species are not patentably distinct. However, if art is found on one species, it shall then apply to all.

The requirement is still deemed proper and is therefore made FINAL.

In view of no art having been found, the election of species requirements over species C to E and elections dependent therefrom (see page 3 to 8 of the restriction requirement in paper no. 5) are withdrawn.

Claims 1-24 and 26 are presented for examination.

***Specification objection***

✓ 1. The disclosure is objected to because of the following informalities:

On page 8, line 18 of the specification, the term "last" appears to be a typographical error. Do Applicants intend "least"?

On page 11, lines 2-17, "iii" and "vi" are specified. However, "iv" and "v" are missing.

Appropriate correction is required.

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: in claim 21, (iii) N-aryl, (iv), and (v) are specified. However, the claimed subject matter is not disclosed in the specification.

***Claim rejection***

❖ The following is a quotation of the **first paragraph of 35 U.S.C. 112**:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Scope  
Rej

Claims 1-3, 12-17, 19-24, and 26 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a cubic gel comprising a mixture of two specific compounds at specific percent ranges, does not reasonably provide enablement for any cubic gel. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims. On page 4, lines 4-14, and page 9, lines 8-26, Applicants disclose the above-cited gels. No others are disclosed.

❖ The following is a quotation of the **second paragraph of 35 U.S.C. 112**:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 12-17, 24 and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

✓ In claims 12-17, the term "capable" is vague. It is indefinite because it does not define an absolute action. It's a subjective term.

In claim 24, the term "medium" is vague. What kind? Liquid? Solid? Gas?

***Conclusion***

Claims 1-3, 12-17, 19-24, and 26 are rejected.

Claims 4-11 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen Nguyen whose telephone number is (703) 605-1198. The examiner can normally be reached on M-F (9:00-4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's primary, Edward J. Webman can be reached at (703) 308-4432 or her supervisor, Minna Moezie can be reached at (703) 308-4612. The fax phone numbers for the organization where this application or proceeding is assigned are

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(703) 308-4556 for regular communications and (703) 305-3592

for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Helen Nguyen  
Patent Examiner

May 9, 2002

  
EDWARD J. WEEMAN  
PRIMARY EXAMINER  
GR 1